State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

May 23, 2016

Mr. Nick Niquette

Re: Niquette v. Woonsocket Police Department

Dear Mr. Niquette:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Woonsocket Police Department ("Police Department" or "WPD") is complete. By email correspondence dated October 8, 2015, you contend that the Police Department violated the APRA when it improperly denied your APRA request. It appears you requested records concerning an incident where law enforcement officers were dispatched to your house. It does not appear that this incident concerned you.

In response to your complaint, we received a substantive response from the Police Department's legal counsel, Michael J. Marcello, Esquire. Attorney Marcello states, in pertinent part:

> Mr. Niquette specifically asked for 'records related to police and detective dispatched to * * * * Woonsocket, RI 02895 on July 1, 2015 [including] Officer and Detective notes and memos. Statements made by complainants. Any and all information related to [this] incident.'
>
> Thereafter Det. Christopher Brooks responded by return email that 'There are no public records for the person you requested them on.'
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> In doing so, the WPD relied on prior interpretations of the APRA by your office which has held in the past that when no arrest has occurred, there is a presumption that the incident report recording contact with the WPD is not a public record. For example, the Department of R.I. Attorney General has previously opined:

> This Department has consistently held that where an arrest has not taken place, there is a presumption that incident reports are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(D). For example, in In re: Cumberland Police Department, ADV PR 03-02, the Cumberland Police Department sought an opinion from this Department as to whether 'all' police reports regarding an incident, and not just the initial arrest report, were public records under the APRA. In that instance, we noted that based on our review of the APRA law enforcement exemption in its entirety, the General Assembly made a substantive distinction between initial arrest records, which the APRA deems public, and other offense reports created by law enforcement agencies, which may describe an incident lacking sufficient cause to prompt an arrest. Therefore, we concluded that 'when a law enforcement agency investigates a complaint and determines that an arrest is not warranted, there exists a strong presumption that records arising out of that investigation fail to meet the threshold requirement established by R.I. Gen. Laws § 38-2-2(4)(i)(D)(c).' [1]
>
> In the July 1, 2015 incident that is the subject to Mr. Niquette's request, no arrest was made and therefore, it is the position of the WPD and of the City that the incident report and police narrative is not subject to disclosure under the APRA.[2]

We acknowledge your rebuttal.

At the outset, we note that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Police Department violated the APRA. See R.I. Gen. Laws § 38-2-7. In other words, we do not write on a blank slate.

We agree with the Police Department's submission that this Department has consistently held that where an arrest has not taken place, there is a presumption that initial incident reports are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(D). In In re: Cumberland Police Department, ADV PR 03-02, this Department concluded that "when a law enforcement agency investigates a complaint and determines that an arrest is not warranted, there exists a strong

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[1] This law is now codified at R.I. Gen. Laws § 38-2-2(4)(D)(c).

[2] The Police Department, in its response, included a copy of the unredacted incident report for this Department's in camera review. In your rebuttal, you provided this Department with what you contend is an unredacted copy of the record at issue. While this representation raises the issue of whether this issue is moot and whether this Department should render a finding, in this case, we decide to reach the merits.

presumption that records arising out of that investigation fail to meet the threshold requirement established by R.I. Gen. Laws § 38-2-2(4)(i)(D)(c)." Id. See also Snow v. Dept. of Public Safety, PR 10-12; McQuade v. Rhode Island State Police, PR 13-03; Zompa v. West Warwick Police Department, PR 13-07; Radtke v. Dept. of Public Safety, PR 13-10.[3]

Your APRA request implicates, among other provisions, R.I. Gen. Laws § 38-2-2(4)(D)(c), which exempts from public disclosure records maintained by law enforcement agencies for criminal law enforcement purposes where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Clearly, there is some privacy interest concerning the individuals named in these documents. See e.g., Fund for Constitutional Government ("FCG") v. National Archives and Records Service, 656 F.2d 856, 864 (D.C. Cir. 1981)("There can be no clearer example of an unwarranted invasion of personal privacy than to release to the public that another individual was the subject of an FBI investigation."); American Civil Liberties Union ("ACLU I") v. Department of Justice, 655 F.3d 1, 7 n.8 (D.C. Cir. 2011)("disclosure of records revealing that an individual was involved or mentioned in a law enforcement investigation implicates a significant privacy interest"). As such, R.I. Gen. Laws § 38-2-2(4)(D)(c) requires that this Department weigh the privacy interests in the requested records with the public interest in disclosure.

In your complaint, you do not identify the public interest in the disclosure of these documents that you wish this Department to consider and no public interest is readily discernible from our review. At best, your complaint expresses that you "would like to know why" law enforcement was dispatched to your home, but the United States Supreme Court has made clear that the public has an interest in a document that "sheds light" on how government operates and that a citizen requesting access to a document must demonstrate an "interest more specific than having the information for its own sake." See Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 772-773 (1989). Not only do we question whether the incident report in question sheds light on how government operates, but your complaint makes clear that you seek this information "for [your] own sake." Id. Moreover, our review of the report reveals it contains, at least some, personal and sensitive information. These privacy interests therefore outweigh any interest the public may have in disclosure of such a report, particularly given the presumptive nature of an incident report that does not culminate in an arrest.

We must also address the suggestion that because the records are related to what you represent is your home, you have a greater interest in gaining access to the records under the APRA. If this Department determines that a particular document is a public record, then any person may access or inspect that record regardless of whether or not that person is an interested party. Once a record is made public to one person under the APRA, that record is public to all. We note that in Bernard v. Vose, 730 A.2d 30 (R.I. 1999), the Rhode Island Supreme Court held that the petitioner did not have a right, under the APRA, to review his own board files, which contained personal and sensitive information about him, because once the files were made public to him under the APRA, the files were then free for inspection by the general public. Because the

[3] In all four (4) of these findings, this Department concluded that the respective Police Departments did not violate the APRA by denying a request for an incident report that did not culminate in an arrest.

privacy interest of the individual outweighed the public's interest in disclosure, the Rhode Island Supreme Court exempted the files from disclosure. See also DARE v. Gannon, 713 A.2d 218, 225 (R.I. 1998). For this reason, the fact that you requested records concerning an incident that occurred at your residence is of no consequence to our analysis. See D'Amario v. Rhode Island Probation Office, PR 08-22; DeWitt v. Department of Corrections, PR 02-16. For these reasons, we find no violation.

Although the Attorney General has found no violation and will not file suit in this matter, nothing within the APRA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing this file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

Lisa A. Pinsonneault
Special Assistant Attorney General

LP/kr

Cc: Michael J. Marcello Esq.